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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/405,777	09/27/1999	JOHN G. WACLAWSKY	CIS99-1717	9859

7590 04/28/2004

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EXAMINER
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ODLAND, DAVID E

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/405,777

Applicant(s)

WACLAWSKY ET AL.

Examiner

David Odland

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20 & 22-36.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
JOHN PEZZLO  
PRIMARY EXAMINER

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Continuation of Part 5: the Applicant's arguments are not persuasive.

Referring to page 12 second paragraph, the Applicant argues that the router 58 does the intercepting and redirecting and not the proxy handler in proxy host 62. The Examiner respectfully disagrees. As pointed out in column 2 lines 45-50 the router also implements the proxy handler protocol. Thus the proxy protocol that is implemented by the router is used to intercept and generate the response. Furthermore, the router 58 and proxy host 62 can be considered a single distributed node and thus a single entity, since they work together to function as a proxy for the receiving host 52, as discussed below.

Referring to page 12 paragraph 3, page 14 paragraphs 3-5 and page 18, the Applicant contends that the present invention differs from the Baugher reference because in the invention the intercepting of the request signal and the generating and providing of the control signal is done from the same node and thus there is no redirecting of the request signal as performed in the Baugher reference. The Examiner respectfully disagrees. Firstly, there are no claim limitations reciting the details of the generating step and as such the limitation is taken broadly wherein the generating step may include the redirecting step that is performed in Baugher. Specifically, both the router and the proxy host 62 are used to implement the entire proxy service described in Baugher. Thus, the router 58 and the proxy host 62 can be considered a single entity in the form of a single distributed node. Furthermore, a proxy as defined by *Webster's Dictionary* is a function who acts as a substitute for another (see attached definition in Appendix I). Hence, the router and proxy host which both implement the proxy protocol can, as a whole, be considered as providing a function who acts as a substitute for another (i.e. together the function to provide a proxy service that relieves the receiving host from having to make

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bandwidth decisions). Lastly, from the prospective of the OSI model, the router does 'generate' the response since at the physical layer it is responsible for sending the electrical signals that make up the response over the network to the requesting source. Thus, the intercepting of the request and the generating and providing of the response are performed at the same node.

In response to applicant's argument on page 15 through 16, that the reference does not teach or suggest every claim element, the Applicant is reminded that the test for obviousness is not whether claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references and/or what is well known in the art at the time of the invention would have been obvious to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the Baugher invention is used to relieve host of the burden of making bandwidth decisions, thus adding a feature in deciding not to contact the host in response to the request signal would have been an obvious to a skilled artisan at the time of the invention in order to further reduce the burden which Baugher is trying to prevent.

On page 17 paragraphs 1 and 2, the Applicant argues that the Examiner has made contradictory interpretations of the Baugher reference because claims 22, 25 and 26 recite that the request signal source is a router but the Office Action previously referenced to the request signal source as the sending host 50 with respect to claim 1. Furthermore, the Applicant suggests that the Office Action also previously asserted that router 54 or 58 are considered the request signal source. The Examiner respectfully disagrees. The previous Office Action never discusses any such configuration nor is any such correlation made. Conversely, the previous Office Action actually states that the request source is the router, with respect to the claim 1 rejection (see

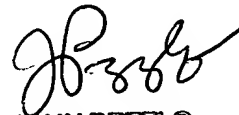
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previous Office Action). Note, router 54 can be considered the source of the request since it is routing the PATH message to router 58 and as mentioned above according to the OSI model it generates the electrical signals that make up the request message being sent over network 60. Furthermore, even though the previous Office Action does have a consistent interpretation the sending host 50 could also have been considered as the request source since it can broadly be interpreted as an 'intermediate node'. Namely, since the sending node is a computer that processes data and has input and output ports, it can receive data from its input port(s) (i.e. a keyboard, mouse, etc.) and can route this data to a plurality of other nodes such as a printer, a database, a monitor and over a communications network such as network 60. Furthermore, the Applicant argues that the data stream from sending host 50 to router 54 must follow the same path from sending host 50 to receiving host 52. The Examiner respectfully disagrees. The Network 60 may be the Internet which is a packet switched network, thus packets follow different paths to go from sources to destinations, thus indeed the paths between host 50 and host 52 are different.

In response to applicant's argument on pages 19-20, that the reference does not teach or suggest every claim element, the test for obviousness is not whether claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the Baugher invention is used for making bandwidth decisions with regards to implementing the Reservation Protocol, thus adding the features recited in claims 30-32 would have been an obvious to a skilled artisan at the time of the invention in order to further reduce the burden which Baugher is trying to prevent

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because if the routers are getting overly congested due to the fact they cannot use their resources for which they have reserved for the transmitting and receiving nodes, then the nodes can readjust there resource reservation requirements in order to relieve the congestion, thereby increasing the efficiency, fairness, quality and reliability of the Baugher system.



**JOHN PEZZLO**  
**PRIMARY EXAMINER**

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## **Appendix I**

growing coal; *Skt* *piśatī* he sings, and prob. to L.  
**prur-** more at **FREEZE** (1592); marked by or arousing an  
 or unwholesome interest or desire; *esp.* marked by, arous-  
 ing or leading to unusual sexual desire — **pru-ri-ent-ly** *adv.*

ˈvɪʒən \zh- vision\ ˈvɪ, ɛ, ɔ, æ, ʊ, ɪ, ʌ see Guide to Pronunciation

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